

PETITION FOR ZONING VARIANCE

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 1B01.2.C.4 (1975, BCZR) 301.1 to permit an open projection (deck) with a setback of 1 foot in lieu of the required 6 feet and to amend the 1st amended final development plan of "Perryvale", Lot 57, Block C, to allow construction outside of the building of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County, for the following reasons: (Indicate hardship or practical difficulty)

1. To correct a dangerous slope for the safety of our children and ourselves
2. To reclaim previously unusable space
3. To enhance the beauty of our home and neighborhood
4. To enhance the saleability of our property

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:
 (Type or Print Name)
 Signature
 Address
 City and State
 Attorney for Petitioner:
 (Type or Print Name)
 Signature
 Address
 City and State
 Attorney's Telephone No.:
 Address Phone No.

Legal Owner(s):
 George J. McDaniel
 (Type or Print Name)
 Signature
 Diane M. McDaniel
 (Type or Print Name)
 Signature
 9021 Moonstone Road, 236-7946
 Address Phone No.
 Baltimore, Maryland 21236
 City and State
 Name, address and phone number of legal owner, contract purchaser or representative to be contacted
 Name
 Address
 City and State
 Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 21st day of November, 1986, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 29th day of December, 1986, at 9:30 o'clock A.M.

Zoning Commissioner of Baltimore County.

(over)

IN RE: PETITION ZONING VARIANCE AND AMENDMENT E/S of Moonstone Road, 65' S of the centerline of Hedgerow Way - 11th Election District
 BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY
 George J. McDaniel, et ux, Petitioners
 Case No. 87-265-A

ORDER

Pursuant to a request filed by the Protestant herein, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 12th day of February, 1987, that the decision rendered in this matter, dated January 12, 1987, be stayed for a period of ten (10) days from the date of this Order.

It is FURTHER ORDERED that the appeal period shall be from the date of this Order and not from the January 12, 1987 Order.

Zoning Commissioner of Baltimore County

AJ/srl
 cc: Mr. & Mrs. George J. McDaniel
 Mr. Ramesh Desai
 People's Counsel

IN RE: PETITION ZONING VARIANCE AND AMENDMENT E/S of Moonstone Road, 65' S of the centerline of Hedgerow Way - 11th Election District
 BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY
 George J. McDaniel, et ux, Petitioners
 Case No. 87-265-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a variance to permit a side yard setback of one foot in lieu of the required six feet for a deck and, additionally, to amend the 1st Amended Final Development Plan of Perryvale, Lot 51, Block C, as more particularly described on Petitioners' Exhibit 1.

The Petitioners appeared and testified. Neighbors and friends of the Petitioners testified in support of the request. Ramesh Desai, the owner of the property adjoining that impacted side, testified in opposition. Friends of Mr. Desai testified on his behalf. A letter of opposition was also received from the other adjacent neighbor.

Testimony indicated that the subject property, located on Moonstone Road and zoned D.R.5.5, is improved with the residence in which the Petitioners have lived for eight years. The 26' x 29' dwelling, situated on a 56' x 110' lot, is situated within ten feet of the north side property line. Mr. Desai's residence is located 12 feet from that common property line.

Mr. McDaniel decided that, due to a 30 to 45 degree downward slope of the property from his dwelling to the north property line, a deck would convert unusable space to useful space. A 9' x 42' deck was constructed without a permit one foot from the side property line and was attached to approximately one-half of the side of the house and stretches into the rear yard. Further testimony indicated that the subject slope is so steep that

into retribution, violation, hearings. In fact, the Court of Appeals has so stated. Klein v. Colonial Pipeline Company, 462 A.2d 546. It would be pointless to do other than decide the real issue presented.

The noise about which the Protestant complained could result even if the deck were not present. The lots are not large, and the homes were constructed to comply with the windowless side yard setback requirements.

An area variance may be granted where strict application of the zoning regulation would cause practical difficulty to the petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the petitioner must meet the following:

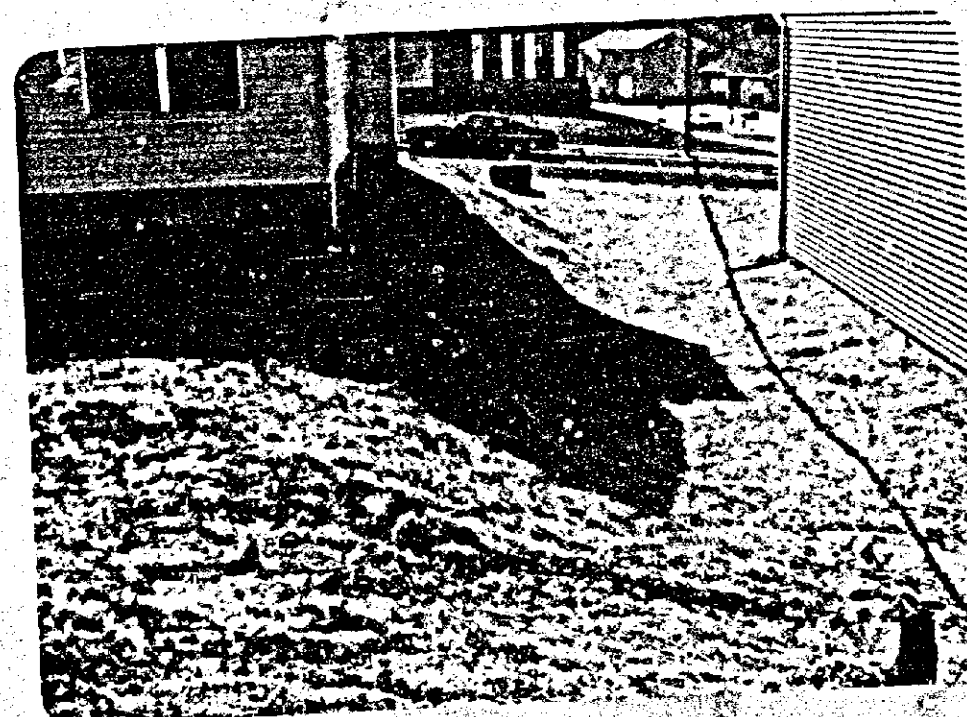
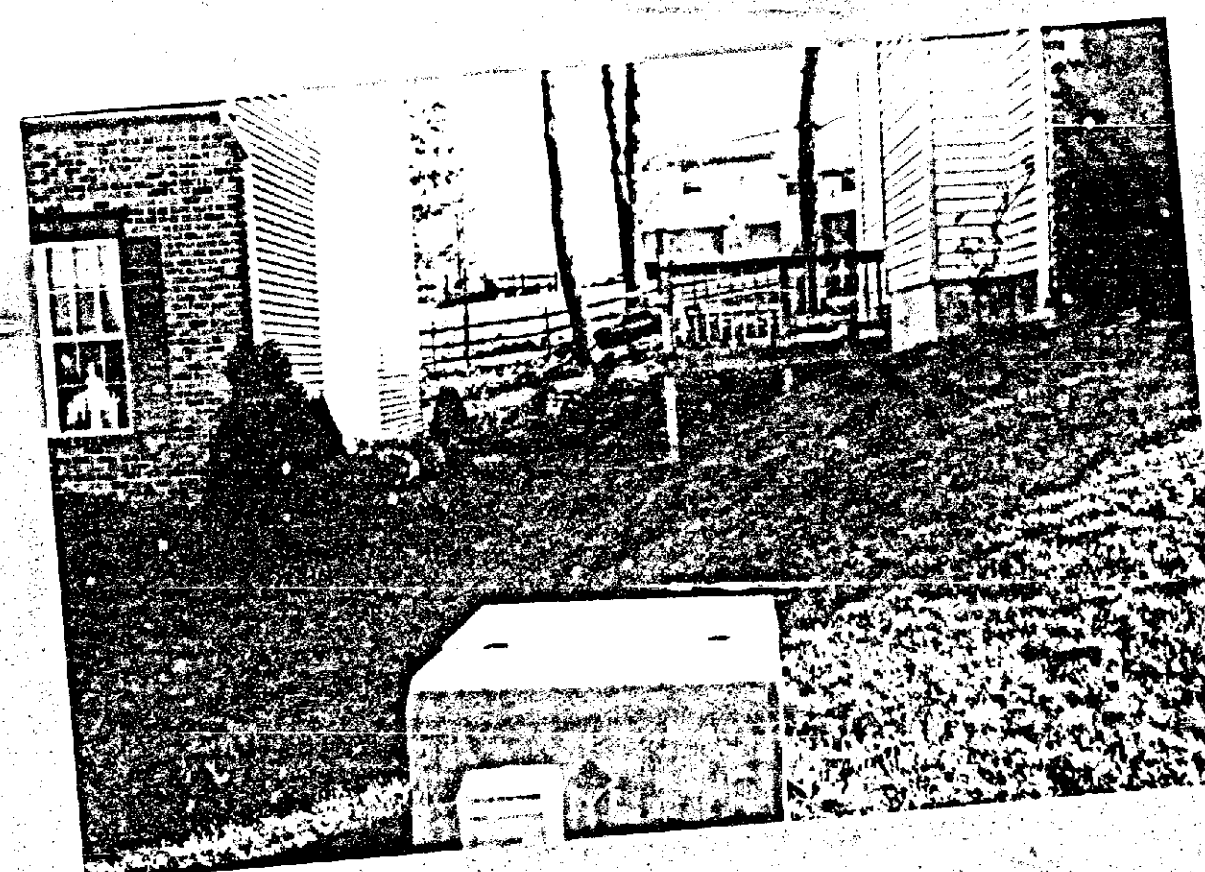
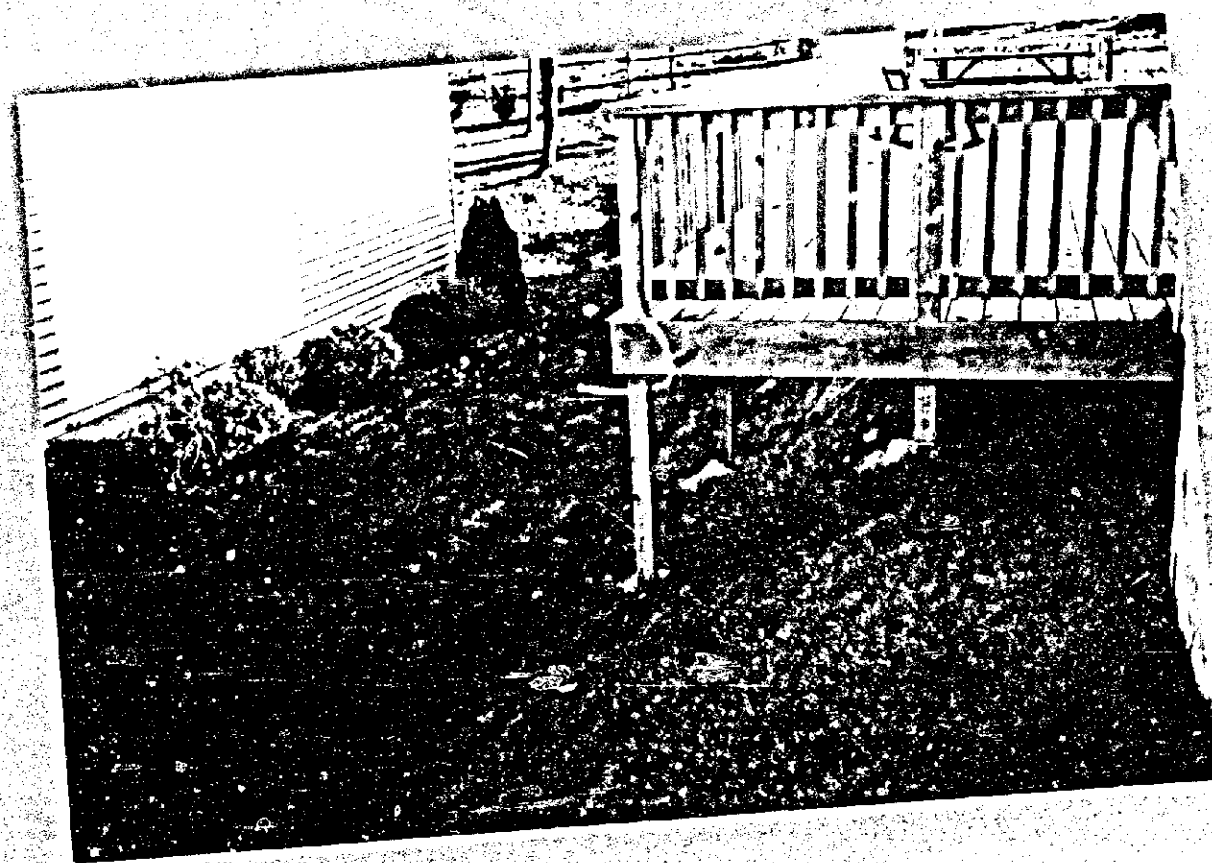
1. whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
2. whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
3. whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

It is clear from the testimony that if a variance were granted, such use would not be contrary to the spirit of the BCZR and would not result in substantial detriment to the public good.

After due consideration of the testimony and evidence presented, it is clear that a practical difficulty or unreasonable hardship would result if a variance were not granted. It has been established that the requirement from which the Petitioners seek relief would unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition,

- 3 -



a variance will not be detrimental to the public health, safety, and general welfare.

However pragmatic and justified the Petitioners were to propose and construct the deck, the legitimate concerns of Mr. Desai and the other adjacent neighbor must be considered, even at this late date. This approval is tempered by understanding the Protestant's objections, and therefore, the requested one-foot side yard setback will not be granted. However, a three-foot side yard setback will be with the requirement to landscape the length of the deck closest to the common boundary line with some type of evergreen tree. This will require the Petitioners to remove two feet from the width of the existing deck, and inasmuch as they constructed it themselves, this should not impose a financial hardship, even if that were a consideration, which it is not. The landscaping should provide an adequate buffer to allow the Protestant his privacy and continue his right of enjoyment of his property.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the requested variance and amendment should be granted.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 12th day of January, 1987, that a variance to permit a side yard setback of three feet in lieu of the required six feet for a deck and, additionally, the amendment to the 1st Amended Final Development Plan of Perryvale, Lot 51, Block C, be and are hereby GRANTED, from and after the date of this Order, subject, however, to the following restrictions which are conditions precedent to the relief granted herein:

1. The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware

people have fallen and Mr. McDaniel's lawn mower has overturned twice as he was attempting to cut the grass. With the birth of his first child, approximately three years ago, he decided to make this side of the house safe by hiding the slope in such a way that it would be level with the rear yard. He preferred a deck to any landscaping.

Mr. Desai opposes the deck because of the noise which he and his family claim invades their privacy. He argued that it is too close to his property line and that it is a nuisance. Neither Mr. McDaniel nor Mr. Desai have windows on the sides of their homes facing the deck.

The Petitioners seek relief from Sections 1B01.2.C.4 (1975 Zoning Regulations) and Section 301.1, pursuant to Section 307, Baltimore County Zoning Regulations (BCZR).

There is no question that any person committing an illegal act must be held accountable for his actions. The Petitioners constructed the deck without the requisite permit, and the Protestant demands an answer to the question of what the consequences of this act may be. To be sure, there is a strong attraction to deny this request because of the failure to comply with County law. This is the simple response, one that does not answer the ultimate question of whether the deck should be permitted within one foot of the property line. If the variance here is denied due to the lack of a permit, the Petitioners would be required to remove the deck. Certainly, this would initially satisfy the Protestant, while punishing the Petitioners. However, nothing would then prevent the Petitioners from filing a new Petition for Zoning Variance once the deck was gone. At some point, now or later, the primary issue would require a decision. It would be simple retribution to deny the request for failure to have a permit, but it is not the intent of the zoning regulations to convert requests for variances or special exceptions

- 2 -

8-25-87

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Arnold Jablon
TO: Zoning Commissioner Date: December 8, 1986

Norman E. Gerber, AICP, Director
FROM: Office of Planning and Zoning

SUBJECT: Zoning Petitions No. 87-265-A, 87-270-A, 87-271-A, 87-272-A and 87-273-A

There are no comprehensive planning factors requiring comment on these petitions.

Norman E. Gerber, AICP
Director

NEG:JGH:sib

CPS-008

27-1250
27-1250
14-118
9019 Moonstone Road
Baltimore, MD 21236
December 23, 1986

Zoning Commissioner
Baltimore County Office
111 W. Chesapeake Avenue
Towson, MD 21204

Case No. 87-265
December 29, 1986 -- 9:30 a.m.

To Whom It May Concern:

We respectfully request that you rule against Case No. 87-265 which would amend the six foot building space between properties to be one foot in the development of Perryvale (Rolling Hills).

While we do believe that one has a right to do what he wishes with his property, one should not be allowed to interfere with the right of another to do same. Our rights stop when they infringe upon the rights of another.

As the properties in Perryvale are considered rather small (ours at 9019 is only 50' by 110') by allowing the code to be changed to one foot would not only interfere with the light, air and beauty of the surrounding area which is extremely limited in open space, it is also an unreasonable request. We do appreciate the fact that the homeowners at 9017 have the right to enjoy a beautiful large deck, with a six foot high privacy fence. However, we do feel that right should not force the homeowners at 9015 to have as their view the back of several feet of wood pilings, six feet in the air, thus cutting off their light, air and view of the environment. In addition, their property value certainly would be decreased as a result of this imposing structure thus affecting the entire community.

While "improving" our properties, one would expect the parties involved to be reasonable and considerate of others. Therefore, we respectfully request that the six foot zoning code be upheld for the protection of the rights of those residing in Perryvale. Thank you for considering our viewpoint.

Sincerely,

Mr. & Mrs. Jeffrey L. Peters

Mr. & Mrs. Jeffrey L. Peters

9019 Moonstone Rd

21236

RECEIVED
DEC 24 1986

ZONING OFFICE

BY CERTIFIED MAIL

RAMESH M. DESAI
9023 Moonstone Road
Baltimore, Md. 21236.

RECEIVED
DEC 22 1986
ZONING OFFICE

December 19, 1986.

Mr. Arnold Jablon
Zoning Commissioner of Baltimore County
County Office Building
111 West Chesapeake Avenue
Towson, Md. 21204

Dear Mr. Jablon,

This is in reference to the petition for Zoning Variance filed by Mr. George J. McDaniel, 9021 Moonstone Drive, Baltimore, Md. 21236. The case number is 87-265-A.

I am the owner of the house next to Mr. McDaniel's house and the wood deck for which the zoning variance is sought is constructed between my house and Mr. McDaniel's house. Thus, I am directly affected by it.

I would like to request that you not grant the petition and refuse the building permit for the following reasons.

1. No building permit was taken by Mr. McDaniel before the start of the construction. Furthermore, the construction is in violation of Baltimore County Zoning Laws. The owner now, after the facts, is trying to get the permit by filing for zoning variance. In fact, if I had not complained the owner would not have asked for such variance.
2. As shown in attached Sketch 1, our two houses are only 20 feet apart, which is not much to start with and now with the construction of this deck the houses in effect, come closer. While sitting in my living room or dining room, I can hear people talking on the deck. This is very disturbing and at times annoying. Privacy was one of the most important criteria when we bought the single family home instead of a townhouse. Privacy is now seriously compromised.

RAMESH M. DESAI

3. Since the deck is built very close to the property line (see the attached Sketch 1), it is potentially a fire hazard. Wood deck can catch fire and harm my house which is not far away.

4. As shown in side elevation in Sketch 2, the deck continues towards the rear of the house with an abnormally high fence attached to it. The fence is about 12 feet high from ground level. Visually, it is very imposing and does not lend itself to the open suburban surroundings. Are there no limits to the height of fence at a property line?

5. The combined effect of items 2, 3 and 4 discussed above is to negatively impact the value of our house. A would be buyer will have serious reservations in accepting this deck next to the house.

Finally, I would like to respectfully request once again that you not grant the petition for the variance and request the owner to remove the wood deck. Thank you for your assistance in this matter.

Very truly yours,

Ramesh M. Desai

encl.

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204
494-0211

NORMAN E. GERBER
DIRECTOR

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

DECEMBER 2, 1986

Re: Zoning Advisory Meeting of October 21, 1986
Item # 140
Property Owner: GEORGE J. McDANIEL, et al
Location: E/S MOONSTONE RD. 65' S.
E HEDGEROW WAY

Dear Mr. Jablon:

The Division of Current Planning and Development has reviewed the subject petition and offers the following comments. The items checked below are applicable.

- ☒ There are no site planning factors requiring comment.
- ☒ A County Review Group Meeting is required.
- ☒ A County Review Group meeting was held and the minutes will be forwarded by the Bureau of Public Services.
- ☒ This site is part of a larger tract; therefore it is defined as a subdivision. The plan must show the entire tract.
- ☒ A record plat will be required and must be recorded prior to issuance of a building permit.
- ☒ The access is not satisfactory.
- ☒ The circulation on this site is not satisfactory.
- ☒ The parking arrangement is not satisfactory.
- ☒ Parking calculations must be shown on the plan.
- ☒ This property contains soils which are defined as wetlands, and development on these soils is prohibited.
- ☒ Construction in or alteration of the floodplain is prohibited under the provisions of Section 22-98 of the Development Regulations.
- ☒ Development of this site may constitute a potential conflict with the Baltimore County Master Plan.
- ☒ The amended Development Plan was approved by the Planning Board on
- ☒ Landscaping: Must comply with Baltimore County Landscape Manual.
- ☒ The property is located in a deficient service area as defined by 8111 178-79. No building permit may be issued until a Reserve Capacity Use Certificate has been issued. The deficient service is
- ☒ The property is located in a traffic area controlled by a "D" level intersection as defined by 8111 178-79, and as conditions change traffic capacity may become more limited. The Basic Services Areas are re-evaluated annually by the County Council.
- ☐ Additional comments:

David Fields, Acting Chief
Current Planning and Development

cc: James Hoswell

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

December 18, 1986

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204

cc:

Chairman

MEMBERS

Bureau of Engineering
Department of Traffic Engineering
State Roads Commission
Bureau of Fire Prevention
Health Department
Project Planning
Building Department
Board of Education
Zoning Administration
Industrial Development

Mr. George J. Daniel
9021 Moonstone Road
Baltimore, Maryland 21236

RE: Item No. 140 - Case No. 87-265-A
Petitioner: George J. McDaniel, et ux
Petition For Zoning Variance

Dear Mr. Daniel:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above-referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

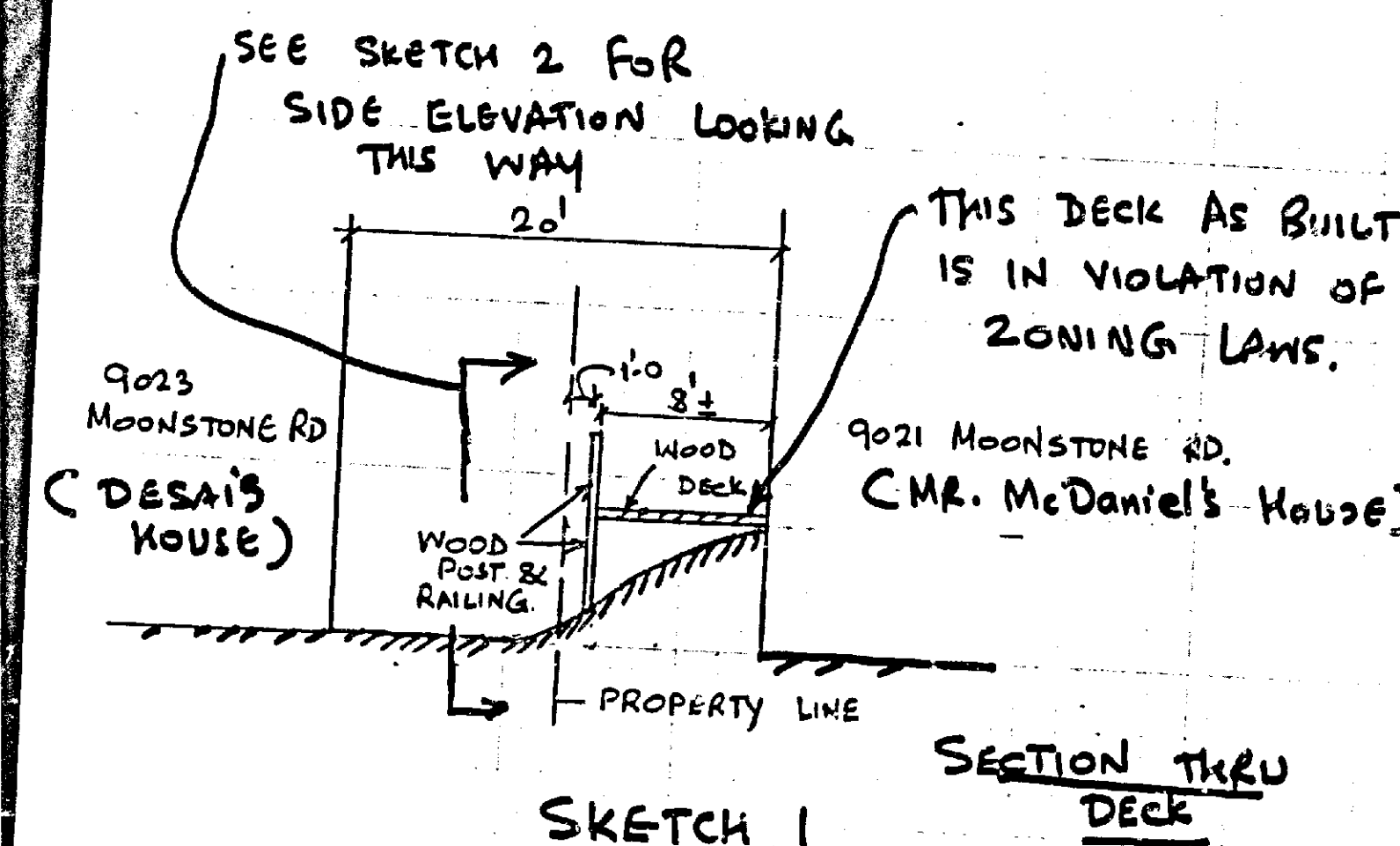
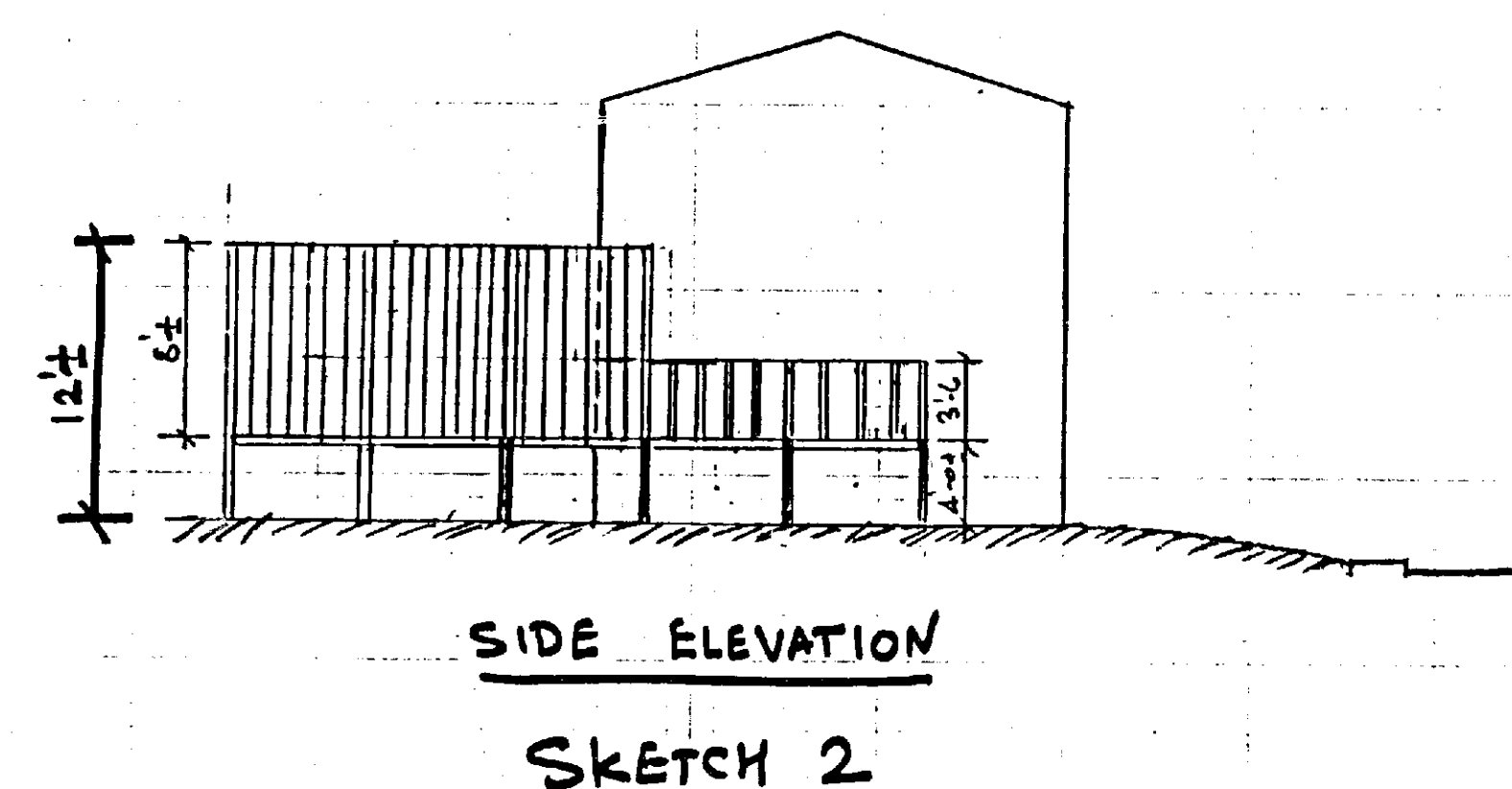
Very truly yours,

James E. Dyer, Jr.
Chairman
Zoning Plans Advisory Committee

JED:kbb

Enclosures

cc: George William Stephens, Jr.
and Associates, Inc.
303 Allegheny Avenue
Towson, Maryland 21204



8-25-87

STEPHEN E. COLLINS
DIRECTOR

October 24, 1986

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Dear Mr. Jablon:

The Department of Traffic Engineering has no comments for items number 137, 138, 140, 141, 142, 143, 144, 145, 146, 147, 148, and 149.

Very truly yours,

Michael S. Flanigan
Michael S. Flanigan
Traffic Engineer Associate II

MSF:lt

PAUL H. REINCKE
CHIEF

October 20, 1986

Mr. Arnold Jablon
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

RE: Property Owner: George J. McDaniel, et ux
Location: E/S Moonstone Rd., 65 ft. S centerline Hedgerow Way
Item No.: 140 Zoning Agenda: Meeting of Oct. 21, 1986

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

- () 1. Fire hydrants for the referenced property are required and shall be located at intervals or _____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.
- () 2. A second means of vehicle access is required for the site.
- () 3. The vehicle dead end condition shown at _____ EXCEEDS the maximum allowed by the Fire Department.
- () 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
- (X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 edition prior to occupancy.
- () 6. Site plans are approved, as drawn.
- () 7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: *John F. O'Neill* Noted and Approved: _____
Planning Group Fire Prevention Bureau
Special Inspection Division

/mb

November 3, 1986

TED ZALESKI, JR.
DIRECTOR

Mr. Arnold Jablon, Zoning Commissioner
Office of Planning and Zoning
Towson, Maryland 21204

Dear Mr. Jablon:

Comments on Item # 140 Zoning Advisory Committee Meeting are as follows:

Property Owner: George J. McDaniel, et ux
Location: E/S Moonstone Road, 65 feet S c/l Hedgerow Way
District: 11th.

APPLICABLE ITEMS ARE CIRCLED:

1. All structures shall conform to the Baltimore County Building Code as adopted by Council Bill #17-85, the Maryland Code for the Handicapped and Aged (H.A.S.A.) #137-1 - 1980 and other applicable Codes and Standards.
2. A building and other miscellaneous permits shall be required before the start of any construction.
3. Residential: Two sets of construction drawings are required to file a permit application. The seal of a registered in Maryland Architect or Engineer is/are not required on plans and technical data.
4. Commercial: Three sets of construction drawings sealed and signed by a registered in Maryland Architect or Engineer shall be required to file with a permit application. Reproduced seals are not acceptable.
5. All Use Groups except B-4 Single Family Detached Dwellings require a minimum of 1 hour fire rating for exterior walls closer than 6'-0" to an interior lot line. B-4 Use Groups require a one hour wall if closer than 3'-0" to an interior lot line. Any wall built on an interior lot line shall require a fire or party wall. See Table 601, Section 107, Section 106.2 and Table 107.2. No openings are permitted in an exterior wall within 3'-0" of an interior lot line.
6. The structure does not appear to comply with Table 505 for permissible height/area. Reply to the requested variance by this office cannot be considered until the necessary data pertaining to height/area and construction type is provided. See Table 601 and 505 and have your Architect/Engineer contact this department.
7. The requested variance appears to conflict with Section(s) _____ of the Baltimore County Building Code.
8. When filing for a required Change of Use/Occupancy Permit, an alteration permit application shall also be filed along with three sets of acceptable construction plans indicating how the existing structure is to be altered in order to comply with the Code requirements for the new use. Maryland Architectural or Engineer seals are usually required. The change of Use Groups are from Use _____ to Use _____ or to Mixed Uses _____. See Section 312 of the Building Code.
9. The proposed project appears to be located in a Flood Plain, Tidal/Fluvial. Please see the attached copy of Section 516.0 of the Building Code as adopted by Bill #17-85. Site plans shall show the correct elevations above sea level for the lot and the finish floor levels including basement.
10. Comments: Deck shall comply with Code Memo #1. A copy is attached.

K. These abbreviated comments reflect only on the information provided by the drawings submitted to the Office of Planning and Zoning and are not intended to be construed as the full extent of any permit. If desired, the applicant may obtain additional information by visiting Room 122 of the County Office Building at 111 W. Chesapeake Avenue, Towson, Maryland 21204.

Charles P. Dunham
Building Plans Reviewer

L/27/86

1984 BOCA, SECTION 110.6

CODE MEMORANDUM #1

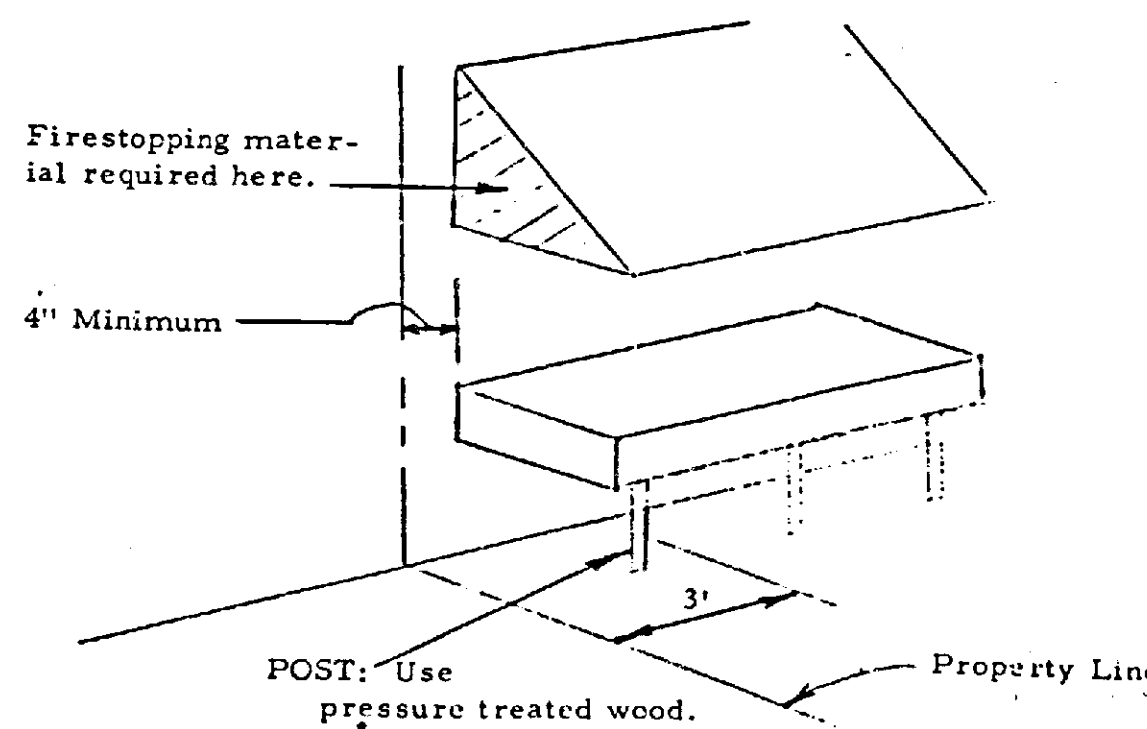
Effective 4-22-85

SUBJECT:

A. Rear Porches

Rear open porches may be constructed of combustible materials up to 3 feet from a property line without any additional fire protection requirements.

Rear open porches may be constructed of combustible materials up to 4" from a property line if facing surfaces shown (see diagram) are protected by a layer of drywall, fire retardant treated plywood, or other approved firestopping material and any exposed supporting members within 3 feet are non-combustible, or pressure treated wood.



OVER

Petition for
Zoning Variance

Case No. 87-55-A
LOCATION: East Side of
Moonstone Road, 65 feet South of the
Centerline of Hedgerow Way (2021
Moonstone Road).

DATES & TIMES: Monday, December
28, 1986, at 9:30 a.m.
PUBLIC HEARING: Room 106,
County Office Building, 111 West
Chesapeake Avenue, Towson,
Maryland.

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the Petition for Zoning Variance to permit an open projection (deck) with a setback of 3 feet in line of the required 6 feet and to amend the First Amended Final Development Plan of "Perryvale," Lot 57, Block C to permit construction outside of the building envelope.

Being the property of George J. McDaniel, et ux, as shown on plat plan filed with the Zoning Office.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

By Order Of
Arnold Jablon
Zoning Commissioner
of Baltimore County

The Times

Middle River, Md., Dec 12 19 86

This is to Certify, That the annexed
Petition
McDaniel

was inserted in The Times, a newspaper printed
and published in Baltimore County, once in each

of one successive
weeks before the 11th day of

December, 19 86

Published.

87-265-A

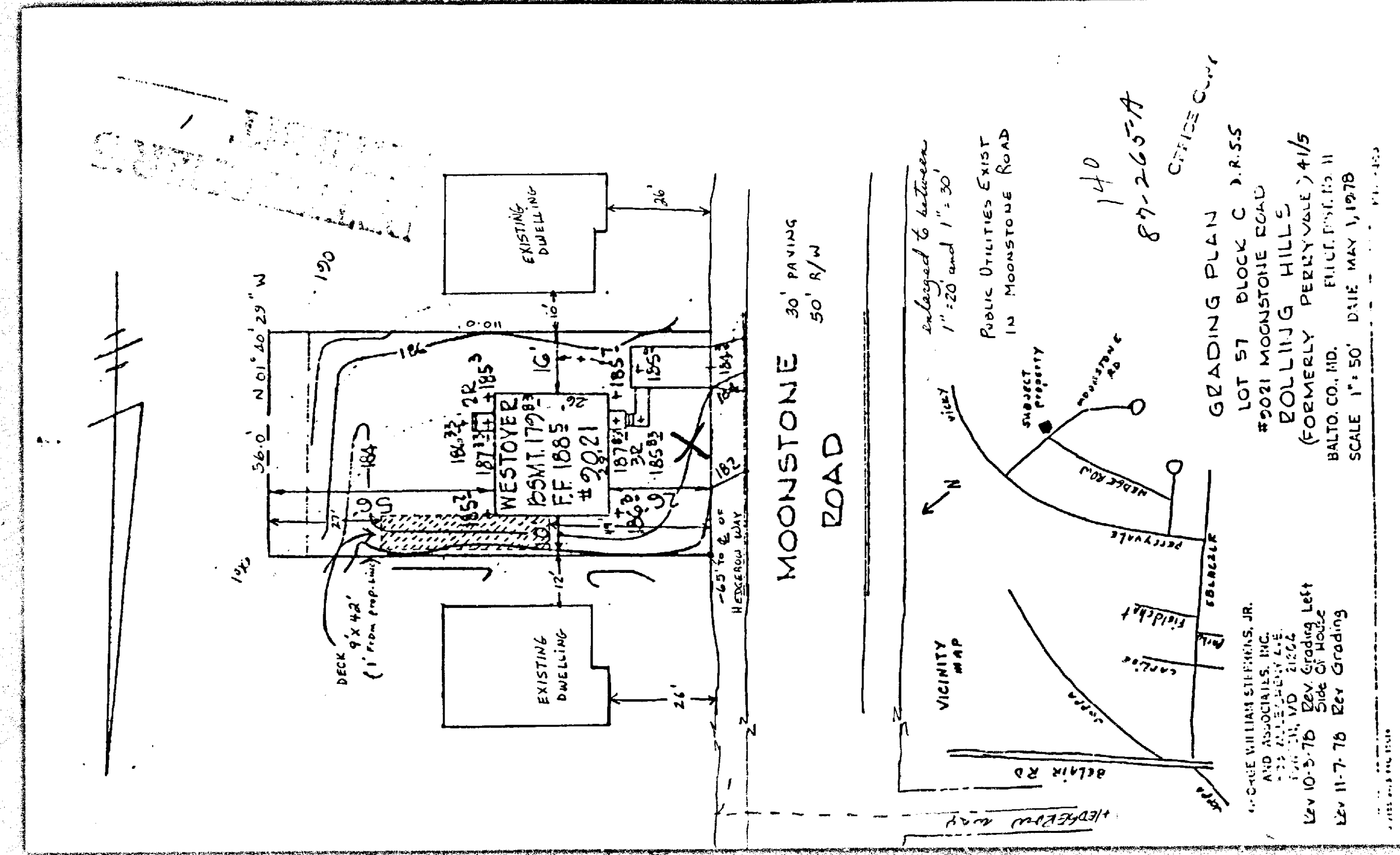
BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your petition has been received and accepted for filing this
21st day of November, 1986.

Arnold Jablon
Arnold Jablon
Zoning Commissioner

Petitioner: George J. McDaniel, et ux Received by: James E. Dyer
Petitioner's Attorney Chairman, Zoning Plans
Advisory Committee



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: James E. Dyer Date: October 21, 1986
FROM: James H. Thompson
Item No. 140
SUBJECT: McDaniel - Petitioner

Please note that the above matter is an active zoning case, C-87-474.
When scheduled please notify:

R. Desai
9023 Moonstone Road
Baltimore, Maryland 21236

JHT/ljs

CPS-008

8-25-87